

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Sidney S. Vuong,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1269
Parcel No. 320/02724-074-000

On April 22, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Sidney S. Vuong was self-represented and submitted evidence in support of his petition. The Polk County Board of Review designated Assistant County Attorney Ralph Marasco, Jr. as its legal representative and submitted evidence in support of its decision. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Sidney S. Vuong, owner of property located at 1121 15th Street, West Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing his property. The real estate was classified residential for the January 1, 2009, assessment and valued at \$158,600; representing \$38,900 in land value and \$119,700 in the improvement value. Vuong protested to the Board of Review on the ground that there is an error in the assessment under Iowa Code section 441.51(1)(d). Specifically Vuong stated, "The assessment is far higher than the most recent property's sale price." He also attached a list of three sales and stated he believed his property should be adjusted to \$122,000. In response to the protest, the Board of Review notified Vuong the January 1, 2009, assessment would

not be changed, stating in part, “because market data indicates that the property is assessed at its fair market value.”

Vuong then appealed to this Board on the same ground and again stated the value of properties had gone down and attached sales to support this claim. Based on the protest to the Board of Review and appeal to this Board, the real claim Vuong asserted is that the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(b). This Board will consider assessed for more than authorized by law. Vuong seeks \$36,600 in relief and values the property at \$122,000.

According to the property record card, the subject property is a split-level, frame dwelling built in 1985 with 1148 square feet of main living area. The property has a one-car basement garage, and the site consists of 0.324 acres.

Vuong submitted eleven records of sales from the assessor’s website. Vuong testified the information indicates that all eleven properties are assessed for more than the sale prices. Vuong also submitted three records from the assessor’s website that were in response to an appraisal from the Board of Review.

We note the data submitted by Vuong was not adjusted to the subject property nor reflects the age, size, or condition of these sales. We also note a large majority of these properties had abnormal conditions impacting the sales. Abnormal sales are not arms-length transactions and do not reflect market value; examples include foreclosures, contract sales, and sales between family members. Iowa Code § 441.21(1)(b). These sales shall not be considered unless they are adjusted. *Id.*

The Board of Review submitted information which indicated the eleven sales submitted by Mr. Vuong, in fact, were not comparable and the sales were not arm’s-length sales transactions. The Board of Review introduced evidence of an independent appraisal conducted by Norman (Mike) Swaim. Swaim testified at hearing regarding the appraisal process. Swaim’s final reconciliation of value for

the subject property was \$160,000 as of January 1, 2009, assessment date. The Swaim appraisal supports the assessment of \$158,600.

The evidence Vuong offered was limited and lacked reliability in support of his opinion that the market value of his property is less than its current assessment. Based upon the foregoing, the Appeal Board finds there is insufficient evidence to support the claim that the subject property is assessed at greater than market value. We find the appraisal submitted by the Board of Review supports the assessment.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If

sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2).

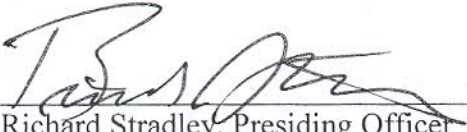
The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Vuong did not provide this Board with persuasive evidence that the current assessed valuation is more than authorized by law; he also failed to provide substantial evidence of its fair market value.

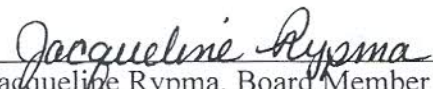
In the opinion of the Appeal Board, the evidence does not support the claims brought before this Board. We, therefore, affirm the assessment of the subject property as determined by the Polk County Board of Review as of January 1, 2009.

THE APPEAL BOARD ORDERS the assessment of the Vuong property, located at 1121 15th Street, West Des Moines, Iowa, as of January 1, 2009, as set by the Polk County Board of Review, is affirmed.

Dated this 20 day of May, 2010.


Richard Stradley, Presiding Officer


Karen Oberman, Board Chair


Jacqueline Rypma, Board Member

Copies to:

Sidney S. Vuong
1121 15th Street,
West Des Moines, IA 50265
APPELLANT

Ralph Marasco, Jr.
Asst. Polk County Attorney
111 Court Avenue, Room 340
Des Moines, IA 50309
ATTORNEY FOR APPELLEE

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-20</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u><i>Sean Carson</i></u>